

PT 95-34
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS

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INSTITUTE OF GAS TECHNOLOGY      )  
    Applicant                     )   Docket #93-16-1212  
                                )   Parcel Index #08-25-201-004  
    v.                           )   08-25-201-007  
                                )   08-25-202-019  
                                )  
THE DEPARTMENT OF REVENUE        )   Barbara S. Rowe  
OF THE STATE OF ILLINOIS        )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Thomas J. McCracken, Jr., Attorney for the Applicant

SYNOPSIS: The Cook County Board of Review/Appeals filed an Application for Property Tax Exemption with the Illinois Department of Revenue (the "Department") for Institute of Gas Technology (the "Applicant") for the 1993 assessment year. The Department denied the application finding that the Applicant did not prove itself to be a charitable organization as claimed by the Applicant. The Applicant filed a protest to the findings of the Department and requested a hearing in the matter. The hearing was held pursuant to the request with the issues being 1.) is the Applicant an exempt organization and 2.) was the property in exempt use or being adapted for exempt use during the 1993 assessment year. It is recommended that the decision of the Director of the Department be that the parcel in question was not in exempt ownership and use for the 1993 assessment year.

FINDINGS OF FACT:

1. The position of the Department in this matter, namely that Cook County parcel index numbers 08-25-203-019 and 08-25-201-007 and 08-25-201-

004 were not in exempt ownership and use was established by admission into evidence of Dept. Ex. Nos. 1-6.

2. The Applicant acquired parcel index number 08-25-201-007 on October 6, 1993 by a trustees deed. (Dept. Ex. No. 1)

3. Following clarification by the Applicant, the parcel at issue herein is 08-25-201-007. The parcel was subdivided in 1994 and as of that year the parcel index number for the property is 08-25-204-001. (Dept. Ex. No. 5)

4. The Applicant was incorporated under the general provisions of "An Act Concerning Corporations" for the State of Illinois on June 3, 1941. (Dept. Ex. No. 1)

5. Applicant's primary purpose is research in the areas of energy. The research is not limited to the gas industry. (Tr. p. 13)

6. Applicant provides its services with consideration to the ability to pay. (Tr. pp. 23-24)

7. Applicant collects membership dues also with the consideration of ability to pay. (Dept. Ex. No. 1; Taxpayer Ex. No. 1)

8. Applicant does not respond to bids requested from industry or the government. Instead, it makes up its own mind as to what may be a promising field of research of energy and then seeks funding for the specific research. (Tr. p. 15)

9. Applicant does a great deal of its work for the federal government. (Tr. p. 30) Applicant historically has had at least 53% of its research sponsored by the government. (Tr. p. 26) The government's purpose for doing this is to provide a long-term stable, diversified base of energy supply for the nation. (Tr. p. 27)

10. During the time period 1988 through 1994, the average amount of funding (of the total budget) that the Applicant received from the government was 63% or 64%. (Tr. p. 36)

11. Applicant also does work for the State of Illinois and other governmental institutions where the funding is covered by a grant. There is no amount of "add-on" available when the research is covered by a grant. (Tr. pp. 69-70)

12. The contracts that the Applicant enters into are often done with other groups who are also involved in the same fields of research. (Tr. pp. 38-42)

13. The Applicant divides the contracts into active and inactive for reporting purposes. (Dept. Ex. No. 5) For definition, "inactive" means a project that has been completed. "Active" means projects which are currently being worked upon during the time period that the report was submitted. (Tr. p. 36)

14. The Applicant's services are available to the public. (Tr. p. 24)

15. When the Applicant does work for private industry, the results are made available through the technical articles that its professional staff submit for publication. These are then made available to the general public through Applicant's library. (Tr. p. 42)

16. The Applicant has a publication requirement regarding government contracts that all results are to be published and made available to the public. (Tr. p. 28)

17. The Applicant has the same responsibility to the industrial sponsors as they do to the governmental contracts regarding publication duties. (Tr. pp. 41-42)

18. Administrative notice is taken of Gas Research Institute v. Department of Revenue of the State of Illinois, 154 Ill. App.3d 430 (1st District, 1987) wherein the Illinois Court of Appeals found that the Gas Research Institute was not an exempt organization for the purposes of a sales tax exemption.

19. The Applicant and Gas Research Institute are totally different entities. Gas Research Institute was created to manage funds approved every year by the Federal Energy Regulatory Commission. The funds are collected as part of the natural gas sales in the United States. The Institute is the contracting, managing and planning body to fund appropriate research and development programs for the natural gas industry with the funds it is approved to collect each year. (Tr. pp. 43-44)

20. Applicant solicits funds from Gas Research Institute. (Dept. Ex. No. 5; Tr. p. 44) Gas Research Institute funding for the Applicant for 1993 was \$3.7 million dollars. This constituted about 25% of the Applicant's research revenue which was \$14.9 million in 1993. (Tr. pp. 45-46)

21. Approximately 2/3 or 64% of the work the Applicant does in the industry category comes from non-gas industry sources. These come from anything from power environmental technology to waste clean-up. (Tr. p. 31)

22. Of the industry contracts (70%) that Applicant was engaged in on June 28, 1994, a number of the projects were in fact in direct competition with the gas industry. (Tr. pp. 32-34)

23. Of the funding that the Applicant receives, 95-98% comes from what they call unsolicited sponsorship. That means that the Applicant itself seeks support from people who have funds for an idea that the Applicant has developed. (Tr. pp. 55-56)

24. For Applicant's fiscal year ending August 31 1992, its operations accounting showed actual total sponsored revenues, \$17,887,200; total other revenues \$6,830,000 for total revenues of \$24,717,200. Expenses were \$25,018,900 for a net loss of \$301,700. For fiscal year 1993, the annual budget figure for total sponsored research revenues was \$18,800,000; total other revenues were \$8,013,000 for total revenues of \$26,813,000. Total

expenses were listed as \$26,623,000 with excess of revenue over expenses budgeted in the amount of \$160,000. (Dept. Ex. No. 5)

25. Applicant receives revenues from sustaining members dues, basic members dues, international associate dues, industrial education, education services, royalty interest and miscellaneous. (Dept. Ex. No. 1)

26. Sustaining membership dues are voluntary membership sums given to the Applicant with no strings attached. The Applicant can use those dues entirely at its discretion. The amount of sustaining membership dues in 1993 was \$2,774,000 (Dept. Ex. No. 1; Tr. pp. 45-46; Post-Hearing Ex. No. 1)

27. These dues make up approximately 33% of all non-sponsored research revenue. (Tr. pp. 17-18)

28. The basic member dues is used for educational and informational dissemination purposes only. Typically the basic member dues represents less than 5% of the total annual revenue. The sustaining member dues are not a condition of membership with Applicant. (Tr. p. 47)

29. Applicant also collects International Associate Dues. The dues amount was fairly small in terms of the total amount of revenue collected and was approximately \$100,000. These dues enable organizations outside of North America to keep in contact with Applicant and to access their information. The money is also applied to support the educational and informational dissemination of Applicant. (Tr. pp. 47-48) For the period ending August 1993, actual International Associate Dues were \$105,000. (Dept. Ex. No. 1; Tr. p. 48)

30. The industrial education component of Applicant's revenues refers to courses, programs and tuitions that Applicant receives from programs they put on during the year. (Tr. pp. 48-49)

31. For the period ending August, 1993, Government-sponsored research was about \$5,684,000 and non-gas related industrial research revenue was

about \$3,900,000. In 1993, approximately 64% of sponsored research revenue came from other than gas industry type contracts. (Tr. p. 68)

32. Applicant's education services refer to training. (Tr. p. 49)
The costs of Applicant's educational courses are covered by subsidized members' dues. (Tr. p. 72)

33. Applicant's August 1993 actual royalty revenue was \$1,200,000 which is over 5% of the actual total revenues of \$22,077,800. For August 1992, the actual royalty revenue figure of \$1,000,000 is 4% of the total revenues of \$24,717,200. (Dept. Ex. No. 1)

34. An exclusive license gives a particular entity exclusive rights under the patent law to that particular research product. Applicant has approximately 400 patents and collects the royalty from those patents. (Dept. Ex. No. 1; Tr. p. 50)

35. Applicant's licensing is only done if it helps to advance technology into the ultimate public use area. (Tr. p. 59)

36. Applicant also publishes all intellectual property rights. (Tr. p. 59)

37. Applicant has obtained 400 patents over the past 50-some odd years. (Tr. p. 61)

38. Applicant maintains that patents are for purposes of enabling Applicant to get research money. (Tr. p. 62)

39. Applicant's licensing is done to put the ideas into the public domain. (Tr. p. 62)

40. The royalty component of Applicant's revenues refers to the royalty that the Applicant gets from their 400 patents. During 1993 royalty income was \$1,600,000. (Tr. p. 50)

41. Applicant proceeds with the patents only as the last resort and if they find that there is no other way to make the technology available other than granting an exclusive license, they do so only after exhausting

the non-exclusive possibilities. (Tr. pp. 50-51)

42. The Applicant was granted a 501(c)(3) designation from the Internal Revenue Service in August, 1942. (Dept. Ex. No. 1)

43. In accordance with the 501(c)(3) designation, Applicant is required to make any research information available on a non-exclusive basis to the public before granting an exclusive license to a company. (Tr. pp. 50-52)

44. Applicant's unreimbursed portion of the internal research and development was \$2,325,568 for 1993. (Tr. p. 68; Dept. Ex. No. 1)

45. Applicant has no stockholders, no capital stock and pays no dividends. (Tr. p. 25)

46. Applicant normally shows no profit at the end of a particular fiscal year. (Tr. p. 25)

47. Applicant's directors or trustees were not compensated for their work. (Tr. p. 25)

48. Any government contracting for research is not undertaken for the benefit of any specific industry (pursuant to law and practice). (Tr. p. 28)

49. An agreement between the architect and the Applicant for building renovation dated December 1994, states that the architect will remodel and renovate approximately 120,000 square feet of existing office and laboratory space located at 1700 South Mt. Prospect Road, the subject parcel. (Dept. Ex. No. 1) The year on the contract should have been 1993. (Tr. p. 77)

50. The Applicant contracted with various contractors for this renovation. All of the contractors' agreements were dated 1994. The entire construction was substantially completed by August of 1994. (Tr. p. 77)

51. During the 1993 assessment year, all research activities

conducted by the Applicant were not done on the parcel herein question.
(Dept. Ex. No. 1)

CONCLUSIONS OF LAW: Article IX, 6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The statutes of Illinois have provisions for property tax exemptions. In particular, 35 ILCS 205/19.7 exempts certain property from taxation in part as follows:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States, all property of old people's homes and facilities for the developmentally disabled, ...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...All old people's homes or homes for the aged or facilities for the developmentally disabled...shall qualify for the exemption stated herein if upon making an application for such exemption, the Applicant provides affirmative evidence that such home or facility...is an exempt organization pursuant to paragraph (3) of Section 501(c) of the Internal Revenue Code,...and...the bylaws of the home or facility...provide for a waiver or reduction of any entrance fee, assignment of assets or fee for services based upon the individual's inability to pay,...

In *Crerar v. Williams*, 145 Ill. 625 (1893), the Illinois Supreme Court defined charity as follows:

A charity, in a legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burthens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in nature.

In the case of *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six

guidelines are as follows:

- (1) The benefits derived are for an indefinite number of persons;
- (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
- (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
- (4) Charity is dispensed to all who need and apply for it;
- (5) No obstacles are placed in the way of those seeking the benefits; and
- (6) The primary use of the property is for charitable purposes.

The Applicant's assertion that it is a charitable organization is not substantiated by the facts and law. The Applicant's by-laws have no provisions for a waiver of fees based upon a persons inability to pay. Consideration of the ability to pay on a sliding scale is not the same as offering services or memberships to those unable to afford them. The Applicant also failed to produce any evidence of actual use of a sliding scale for membership dues or services rendered.

Discharge of debt due to the inability to collect is also not the same as offering services or memberships to those unable to afford them. The Applicant also did not offer any evidence of actual discharge of a debt due to inability to pay.

The Applicant also failed to establish that the benefits derived are for an indefinite number of persons. Although the Applicant admittedly does a great deal of its work for the government and industry, the fact that it has over 400 patents limits the availability of the Applicants' research and restricts the benefits that are derived to those who can afford the royalty payments.

The Applicant's witness testified that the Applicant had revenues of \$14.9 million in 1993. However, the statement of Operations that the Applicant submitted to the Department showed actual revenues (for the year-

to-date time of August, 1993) of \$22,077,800. The same statement also showed actual revenues for August 1992 of \$24,717,200.

The Applicant's witness also testified that the royalty component of the Applicant's revenues are one or two percent. The same witness testified that royalty income in 1993 was \$1,600,000. This is almost eleven percent of \$14.9 million.

I therefore find that the Applicant has not satisfied requirements 1, 4, 5 and 6 of the guidelines stated in Methodist Old Peoples Home v. Korzen and is not a charitable organization. Because the Applicant has not proven itself to be an exempt organization, the question of adaptation for use for the taxable year in question is not pertinent.

It is therefore recommended that the Director find that the Applicant is not a charitable organization and that permanent parcel index numbers 08-25-201-004, 05-25-201-007 and 08-25-203-019 remain on the Cook County assessment rolls for the 1993 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

May 11, 1995